HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.842 OF 2007

Between:

The A.P. Power Generation Corporation Limited
and another

. . .Appellants

AND

Md.Ameer Ali and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellants : Shri G.Vidyasagar

Counsel for respondent No.1 : Shri Chandraiah Sunkara

8th October, 2007

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PER G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 13.07.2007 passed by the learned Single Judge in WVMP No.1346 of 2006 and WPMP No.12234 of 2006 in Writ Petition No.9637 of 2006 whereby he modified ad interim order dated 06.06.2006 and directed the appellants to reinstate respondent No.1 in terms of award dated 11.08.2005 passed in I.D.No.66 of 2003 but confirmed stay against the absorption of respondent No.1.

We have heard Shri G.Vidyasagar, learned counsel for the appellants and Shri Chandraiah Sunkara, learned counsel for respondent No.1 at considerable length and scrutinized the record.

Learned counsel for the appellants made strenuous efforts to convince us that respondent No.1 was employed as a contract labour in 1996 and he cannot be treated as an employee of the appellants, who are successors in interest of erstwhile Andhra Pradesh State Electricity Board (for short 'the Board') and argued that the award passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District for reinstatement and absorption of respondent No.1 in the services of the appellants is liable to be declared nullity. Shri G.Vidyasagar submitted that respondent No.1 was never appointed in the services of the Board and once his claim for absorption was rejected by the competent authority, he cannot be treated as an employee of the appellants for the purpose of absorption and reinstatement. Learned counsel further argued that even though the contract labour system was abolished in the erstwhile

Board, respondent No.1 will be deemed to be continuing as an employee of respondent No.3 and the Tribunal committed a serious jurisdictional error by ordering reinstatement in the services of the appellants.

We have considered the submissions/arguments of the learned counsel. Since the writ petition filed by the appellants against award dated 11.08.2005 passed in I.D.No.66 of 2003 is pending adjudication before the learned Single Judge, we do not consider it proper to opine on the merits of the contention raised by the appellants, because the same are likely to cause prejudice to either of the parties. However, we do not have any hesitation to record our prima facie concurrence with the learned Single Judge that the direction given by the Presiding Officer of the Tribunal for reinstatement of respondent No.1 does not suffer from any patent jurisdictional infirmity which could justify total stay of the award. The question whether, after abolition of the contract labour respondent No.1 became an employee of the Board and thereby acquired right to be treated as an employee of the appellants will be adjudicated by the learned Single Judge on the basis of the factual matrix of the case and the legal position which may be brought to his notice by the learned counsel for the parties, but prima facie, the entitlement of respondent No.1 be treated as an employee of the Board appears to be plausible. Therefore, we do not see any reason to tamper with the discretion exercised by the learned Single Judge, who modified the ad interim order and directed the appellants to partially implement the award passed by the Tribunal. The elements of balance of convenience and irreparable injury are certainly in favour of respondent No.1, who has been out of employment for last few years. For him, it is a question of sustenance of himself and his family. If he is paid few thousand rupees for discharging dues by the appellants, they

will not be put to any injury much less an irreparable injury. As against this, respondent No.1 who has already suffered by being denied employment will be put to grievous injury, if the
ad interim order is to be continued in its absolute terms.

For the reasons stated above, the appeal is dismissed.

G.S.SINGHVI, CJ

8th October, 2007

C.V.NAGARJUNA REDDY, J

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